

9 Official Opinions of the Compliance Board 53 (2013)

- ◆ **Public Body** – *Determined not to be a public body*
 - gathering of agency personnel for training

*Topic headings correspond to those in the Opinions Index (2010 edition) at
<http://www.oag.state.md.us/opengov/openmeetings/appf.pdf>

October 9, 2013

Re: Department of Budget and Management Senior Procurement
Advisory Group, *Gary Goldberg, Complainant*

We address the complaint of Gary Goldberg (“Complainant”), a retired State employee, that the Senior Procurement Advisory Group (“SPAG”) of the State’s Department of Budget and Management (“DBM”) violated the Open Meetings Act (the “Act”) by excluding him from SPAG’s September 19, 2013, session for State procurement personnel. DBM responds that SPAG does not consist of “members” and was not created in any of the ways that make a group a “public body” subject to the Act. DBM’s response includes an affidavit from its chief of procurement, the State employee who organized the group. Complainant has not disputed the statements in the affidavit.

As we will explain, we find that SPAG is not a “public body” subject to the Act. The Act therefore does not entitle the public to attend SPAG’s informational sessions.

The Act applies only to “public bodies,” as that term is defined in the Act. *See* State Government Article (“SG”) § 10-505 (stating the general requirement that public bodies meet in open sessions) and SG § 10-502(h) (defining “public body”). The Act sets forth three ways in which a group consisting of at least two people might be deemed a “public body.” All focus on the way in which the group was created.

The first way for a group to meet the definition is to have been created by a State or local law, an executive order, or a rule, resolution, or bylaw. SG § 10-502(h)(1)(ii). SPAG was not created this way. Instead, DBM’s chief of procurement explains, he created the group; he decided over a decade ago to gather “senior State procurement staff” from the State procuring agencies to discuss problems and solutions and to receive information and training on legislative changes and other procurement-related matters.

The second way for a State group to meet the definition is to be a “multimember” group that both “includes in its membership at least 2 individuals not employed by the State” and was appointed by the Governor or “an official who is subject to the policy direction of the Governor.” SG § 10-502(h)(2)(i). SPAG does not meet this test: the invitees are all employed by the State. Further, the invitees are not “members” who might form a quorum of an entity. The affidavit states that e-mail invitations for SPAG sessions go to procurement personnel from “approximately 60 or so State procuring agencies,” that attendance ranges from about 50 to about 100 people, that some invitees never come, and that State procurement personnel are added to the list either because they are known to DBM or because they have asked to be included. The attachment of a name to this assemblage of State procurement personnel does not mean that they are conducting public business as “members” of a “public body”; they are simply agency employees attending agency information sessions.

The third way is derivative of the other two in that the group has to have been appointed either by a “public body” or an official subject to a “public body’s” policy direction—and then only if the group includes at least two individuals who are neither members of the appointing public body nor State employees. SG § 10-502(h)(2)(ii). SPAG does not meet this test, either. SPAG does not include at least two members of the public, and, in any event, if the State employees who appear on the SPAG distribution list can be said to be appointed by anyone, they are appointed by an agency employee, not an employee or member of a public body.

As we only have the authority to address violations of the Act, we dismiss this complaint. *See* SG § 10-502.4 (defining the Compliance Board’s authority).

Open Meetings Compliance Board

Elizabeth L. Nilson, Esquire
Courtney J. McKeldin